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9-06-16
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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of California-American Water)	
Company (U 210 W) for Approval of the)	Application 12-04-019
Monterey Peninsula Water Supply Project)	(Filed April 23, 2012)
and Authorization to Recover All Present)	
and Future Costs in Rates.)	

PUBLIC TRUST ALLIANCE REPLY COMMENT
RE PHASE 2 PROPOSED DECISION

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I. Introduction

Pursuant to Rule 14.3(d) of the California Public Utilities Commission's Rules of Practice and Procedure, the Public Trust Alliance ("PTA") submits this reply comment regarding the Proposed Decision on Phase 2 of this proceeding, approving the Groundwater Replenishment ("GWR") Project.

PTA would like to comment on the ORA Opening Comment addressing the expedited construction of the pipeline and pump station infrastructure as part of the approval of the GWR project. PTA revises its opposition to the expedited construction of this infrastructure in light of ORA's distinction regarding the ability of infrastructure to maximize, rather than simply permitting, GWR production. See ORA Opening Comment pp. 4-5. This revision of our position is also prompted by language in the Proposed Decision recognizing that the construction of the proposed desalination project might prove to be unnecessary, and the discussion of infrastructure in the Proposed Decision. See Proposed Decision, p. 25: "The desalination plant may or may not ever be built (particularly if MCWD is correct that the GWR, ASR and conservation may be enough to satisfy the terms of the CDO)." and Proposed Decision, Item 4, p. 20 et seq.

II. Comment

Our concern has always been that this potentially dual-purpose infrastructure might prove to be a "Trojan horse" promoting the construction of an unnecessary desal project. Constructing a significant portion of the desal infrastructure prior to a full vetting and environmental review of the project might have tended to create a false sense that the desal project was inevitable simply because much of the infrastructure was already in place and ratepayers were already on the hook for the costs.

1 **A. Purpose of the Infrastructure**

2 ORA argues: “The proposed decision incorrectly states ORA’s position by indicating that
3 ORA argued that ‘...existing infrastructure is sufficient to **maximize** use of water from GWR
4 and ASR[.]’ ORA’s position was that Cal Am’s existing infrastructure could accommodate
5 GWR water and the injection and extraction of ASR Project water. ORA did not argue that
6 existing infrastructure could maximize use of water from GWR and ASR. Therefore, the
7 proposed decision should be revised to include ORA’s correct argument.” ORA Comment, pp. 4-
8 5 (emphasis in original).
9

10 We would like to clarify that PTA does not oppose the construction of infrastructure that
11 maximizes the use of recycled water. Indeed, we strongly support this result. Our sole basis for
12 objection was our belief that desal infrastructure was being pushed through in the guise of GWR
13 infrastructure. If the Commission’s decision recognizes in a meaningful way that a desalination
14 project is not inevitable and that other sources of water might meet the requirement to cease and
15 desist from illegal diversions from the Carmel River, that would allay our concern.

16 In reaching this result, we are also mindful of the persuasive arguments of Marina Coast
17 Water District (“MCWD”) regarding the need for this infrastructure to fully implement GWR,
18 regardless of the construction of a desal plant. See MCWD Phase 2 Reply Brief, pp. 1-5.
19

20 **B. Appropriate Burden of Proof**

21 ORA suggests that “Given the tremendous impact of the \$50 million in infrastructure on
22 the ratepayers in the Monterey District, the Commission should require a clear and convincing
23 record showing that the facilities are necessary on an expedited basis, not merely a
24 preponderance of record evidence.” ORA Opening Comment, p. 2.
25

1 This does not appear to be the correct standard. “The clear and convincing standard has
2 generally been limited to general rate cases and reasonableness reviews which are specialized
3 proceedings. . . . the preponderance standard is the default standard in administrative proceedings
4 and is therefore the appropriate standard for CPCN applications.” 2009 Cal. PUC LEXIS 326,
5 *5.

6 The Commission has specifically rejected the argument that cost is a basis for applying
7 the clear and convincing standard, as follows:
8

9 Finally, ORA likens this case to *UCAN v. PUC, supra*, 187 Cal.App.4th 688, to
argue the clear and convincing standard should have been applied.

10 In *UCAN v. PUC*, parties argued that the clear and convincing standard should
11 apply because of the substantial costs involved. (*Id. at pp. 698-699.*) However, the
12 Court upheld use of the preponderance standard as the default standard in
13 administrative cases. (*Id. at pp. 698-699.*) The Court also found no authority to
support a notion that project costs determine what standard should be used. (*Id. at*
pp. 699-700.) Thus, *UCAN v. PUC* does not support ORA's position.

14 2015 Cal. PUC LEXIS 417, *54.

15 **C. Alternate Ways to Address the Lack of Necessity for a Desal Project**

16 There are perhaps better ways of discouraging the construction of unnecessary
17 infrastructure than to apply the clear and convincing standard, with a possible effect of
18 hampering the full implementation of an environmentally preferable and much needed GWR
19 project. In a ratemaking proceeding, the Commission may, with telling effect, deny recovery of
20 costs for building infrastructure that is not necessary:
21

22 Our ratemaking process for water utilities was reviewed in a recent GRC decision
for California-American Water Company (Cal-Am):

23 The recovery of expenditures through rates for water utilities is based on
24 future test year rate of return ratemaking. [Footnote omitted.] This means
25 that rates of Cal-Am are based on estimated rate base and expenditures

1 for a future year. Actual rate base and expenditures can and do change
2 between the time rates are set and the time events occur.

3 There is no requirement of the utility to spend exactly, or only, the
4 projected amount on each rate base or expenditure component used to set
rates. . . .

5 We leave the fine-tuning of a utility's operation to the discretion of its
6 management. Management discretion is exercised in allocating total
7 dollars for capital and expense items to those areas where the capital and
expense is most necessary, as dictated by constantly evolving priorities. .
. . (D.02-07-011, at pp. 6-7.)

8 The forecasting of plant additions is part of the effort that must be made in any
9 GRC to calculate the revenue requirement for a future test year. As San Gabriel
10 explains, inclusion of Project X in a test year plant forecast and adoption of that
11 forecast in a GRC decision does not guarantee that all investment in Project X
12 will be deemed prudent and reasonable for inclusion in future GRC rate base
13 calculations. In the next GRC, DRA may question whether the utility spent too
much on Project X or that Project X was not or is no longer necessary or useful
for utility service. The Commission may or may not agree, and may or may not
exclude some or all of the Project X investment from rate base.

14 2006 Cal. PUC LEXIS 217, *20-21.

15 **III. Conclusion/Recommendation**

16 PTA suggests that the Commission incorporate language in the decision explicitly
17 recognizing that the approval of the GWR project in Phase 2 of this proceeding does not
18 necessarily imply approval of the associated “small desalination project” and that if Cal-Am
19 incurs expenses in preparation to build a desalination project that is determined by the PUC to be
20 unnecessary, those expenses may be excluded from the rate base.

21
22 Signed: September 6, 2016

_____/s/_____
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